

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES KERN,  
Plaintiff,

v.

SACRAMENTO POLICE  
DEPARTMENT, *et al.*,  
Defendants.

Case No. 2:23-cv-00560-JDP (PC)

ORDER GRANTING PLAINTIFF'S  
APPLICATION TO PROCEED IN FORMA  
PAUPERIS

ECF No. 5

SCREENING ORDER THAT PLAINTIFF:

(1) STAND BY HIS COMPLAINT  
SUBJECT TO DISMISSAL, OR

(2) FILE AN AMENDED COMPLAINT

ECF No. 1

THIRTY-DAY DEADLINE

Plaintiff James Kern is a county inmate proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. Plaintiff alleges that James Kern, a Sacramento County Sheriff's Deputy, violated his constitutional rights because Kern did not have his body-worn camera on while searching and collecting evidence from plaintiff's home. The complaint, in its current form, does not state a claim. I will give plaintiff an opportunity to file an amended complaint, and I will grant his application to proceed *in forma pauperis*, ECF No. 5.

## Screening and Pleading Requirements

A federal court must screen a prisoner's complaint that seeks relief against a governmental entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere possibility of misconduct," the complaint states no claim. *Id.* at 679. The complaint need not identify "a precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that give rise to an enforceable right to relief." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

The court must construe a pro se litigant's complaint liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, "'a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.'" *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

## Analysis

Plaintiff's factual allegations are contained in one sentence. ECF No. 1 at 3. He claims that Kern violated his constitutional rights by searching his home, moving evidence prior to photographing the placement of the evidence, and seizing several pieces of evidence without his knowledge, all with Kern's body-worn camera off. *Id.* Plaintiff's claim fails because an officer

1 does not violate the constitution by having his body worn camera off. *Beitch v. Magnus*, No. CV-  
 2 18-0067-TUC-BGM, 2020 WL 2850185, at \*8 (D. Ariz. June 1, 2020) (noting that an officer's  
 3 failure to turn on a body worn camera is not constitutional violation). Additionally, plaintiff has  
 4 neither alleged that the search and seizure were unconstitutional nor provided any factual  
 5 allegations regarding the context of the search and seizure.<sup>1</sup>

6 I will grant plaintiff a chance to amend his complaint before recommending that this  
 7 action be dismissed. If plaintiff decides to file an amended complaint, the amended complaint  
 8 will supersede the current complaint. *See Lacey v. Maricopa Cnty.*, 693 F. 3d 896, 907 n.1 (9th  
 9 Cir. 2012) (en banc). This means that the amended complaint will need to be complete on its face  
 10 without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended  
 11 complaint is filed, the current complaint no longer serves any function. Therefore, in an amended  
 12 complaint, as in an original complaint, plaintiff will need to assert each claim and allege each  
 13 defendant's involvement in sufficient detail. The amended complaint should be titled "First  
 14 Amended Complaint" and refer to the appropriate case number. If plaintiff does not file an  
 15 amended complaint, I will recommend that this action be dismissed.

16 Accordingly, it is ORDERED that:

- 17 1. Plaintiff's application to proceed *in forma pauperis*, ECF No. 5, is granted.
- 18 2. Within twenty-eight days from the service of this order, plaintiff must either file an  
 19 amended complaint or advise the court he wishes stand by his current complaint. If he selects the  
 20 latter option, I will recommend that this action be dismissed.
- 21 3. Failure to comply with this order may result in the dismissal of this action.
- 22 4. The clerk's office is directed to send plaintiff a complaint form.

23 IT IS SO ORDERED.

24 Dated: April 24, 2023

25   
 26 JEREMY D. PETERSON  
 27 UNITED STATES MAGISTRATE JUDGE

28 <sup>1</sup> Plaintiff is advised that if he is attempting to enjoin ongoing state criminal proceedings  
 against him, this court must abstain. *See Younger v. Harris*, 401 U.S. 37 (1971).